

BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM
EXECUTIVE SUMMARY FOR
ACTION ON RULE INITIATION

AGENDA # III.B.2.

AGENDA ITEM SUMMARY The Department requests that the Board initiate rulemaking to amend the water quality rules in accordance with the revised federal regulations pertaining to concentrated animal feeding operations.

LIST OF AFFECTED RULES The rulemaking would amend ARM 17.30.1303, 17.30.1304, 17.30.1310, 17.30.1322, 17.30.1330, 17.30.1341, 17.30.1343 and adopt by reference 40 CFR Subchapter N Part 412 and new circular DEQ 9.

AFFECTED PARTIES SUMMARY The proposed rule amendments affect all concentrated animal feeding operations.

SCOPE OF PROPOSED PROCEEDING The Department requests that the Board initiate rulemaking, conduct a public hearing to consider the proposed amendments, and take testimony on inclusion of the rule amendments in the Montana Pollutant Discharge Elimination System rules.

BACKGROUND On February 12, 2003, the United States Environmental Protection Agency (EPA) published revisions to the federal Clean Water Act regulations pertaining to concentrated animal feeding operations (CAFOs). These rules updated EPA's 1976 CAFO regulations and became effective on April 14, 2003. Under EPA's revised rules, states with delegated permitting programs are required to revise their rules to reflect the federal regulations.

These revised regulations require all CAFOs to apply for a permit, develop and implement a nutrient management plan, and submit annual reports to the regulatory agency. Additionally, new source performance standards for large swine, poultry, and veal calf regulations have been established that do not allow production area discharges to occur. Existing swine, poultry, and veal calf CAFOs, as well as other animal sectors are allowed to discharge if precipitation events cause an overflow from a facility that is properly designed, constructed, operated and maintained to contain all process-generated wastewater plus the runoff and direct precipitation from a 25-year, 24-hour rainfall event. Additionally, the revised federal regulations specify that large dairy cow, cattle, swine, poultry, and veal calf CAFOs must develop nutrient management plans that are in accordance with state technical standards; maintain setback distances between land application sites and state waters; keep records of routine visual inspections of water lines, containment structure(s), and diversion devices; and install a depth marker in all liquid impoundments.

HEARING INFORMATION The Department recommends that the Board appoint a presiding officer and conduct a public hearing to take comment on the proposed amendments to the Montana Pollutant

Discharge Elimination System rules.

BOARD OPTIONS

The Board may:

1. Initiate rulemaking and issue the attached Notice of Public Hearing on Proposed Amendment;
2. Modify the Notice and initiate rulemaking; or
3. Determine that amendment of the rules is not appropriate and deny the Department's request to initiate rulemaking.

DEQ RECOMMENDATION The Department recommends that the Board initiate rulemaking and appoint a presiding officer to conduct a public hearing, as described in the enclosed proposed Montana Administrative Register notice.

ENCLOSURES

1. Notice of Public Hearing on Proposed Amendment
2. 40 CFR Part 412
3. New Circular DEQ 9: Montana Technical Standards for CAFOs.